



February 11, 2002

Questions and Answers About the Review of Pacific Salmon & Steelhead ESA Listings and Hatchery Policy

(1) Petition Findings and Reinitiation of Status Reviews

What petitioned actions did NMFS accept, and why?

The delisting petitions from the Washington State Farm Bureau et al., the Columbia-Snake River Irrigators' Assoc., the Kitsap Alliance of Property Owners and the Skagit County Cattlemen's Assoc., the seven anonymous petitioners, and the Greenberry Irrigation District, in light of the *Alsea* decision, highlight relevant ESA interpretive issues for ESUs containing unlisted hatchery fish. NMFS concluded that the petitions present substantial scientific and commercial information to suggest that the petitioned actions may be warranted for 14 of the 15 petitioned ESUs (see Summary of the Petitions Received).

Why was the Interactive Citizens United (ICU) petition not accepted?

The ICU petition seeks delisting of a portion (i.e., fish in Siskiyou County) of the threatened Southern Oregon/Northern California coasts (SONCC) coho salmon ESU, an action not allowed under the ESA. The petition lacks an adequate written justification for the recommended measure. Furthermore, it does not present substantial scientific or commercial information that the SONCC ESU is recovered, extinct, or that the data or its interpretation in the original listing determination were in error.

Why did NMFS decide not to initiate status reviews for the Snake River sockeye and Southern California steelhead ESUs?

Although NMFS has elected to conduct status review updates for 11 additional ESUs that were not the subject of a delisting petition, it has decided not to review the status of the endangered Snake River sockeye and Southern California steelhead ESU. The captive hatchery population of Snake River sockeye was determined essential to the recovery of the ESU, and was included in the original listing determination (56 FR 58619; November 20, 1991). Although the captive propagation program offers some protection against extinction of the ESU in the short term, the precarious status of Snake River sockeye (e.g. the annual number of returning naturally-spawned adults since 1991 has ranged from 0 to 250 fish) warrants maintaining the ESU as an endangered species.

In the Southern California steelhead ESU there are no hatchery populations, so the interpretive issues stemming from the *Alsea* decision don't apply. Additionally, Southern California steelhead remain in danger of extinction throughout all or a significant portion of their range and will be maintained as an endangered species under the ESA. (The original listing determination can be found at 6 FR 43937, August 18, 1997.)

Why did NMFS elect to initiate status reviews for ESUs that were not addressed in the delisting petitions?

The *Alsea* decision reversed NMFS' policy of excluding hatchery populations from listing protection when they were determined to be part of the same ESU as listed naturally-spawned

populations. While this ruling affected only one ESU, the interpretive issue raised by the ruling has the potential to affect nearly all of the agency's West Coast salmon and steelhead listing determinations made to date. Since NMFS is reconsidering its listing policy, it makes sense to apply that new policy across the board to all listed ESUs.

Why didn't NMFS list hatchery fish in the first place?

In most cases, NMFS concluded it was unnecessary to protect hatchery populations to achieve the ESA's goal of healthy self-sustaining populations in the wild. NMFS could see no point in imposing unnecessary regulatory burdens on the people of the northwest by listing hatchery populations. In those few cases where NMFS concluded a hatchery population was essential for recovery, it did extend ESA protection by including them in the listing.

What is included in NMFS' request for information?

To ensure that the status review updates are complete and are based on the best available and most recent scientific and commercial data, NMFS is soliciting information and comments concerning the 25 ESUs to be reviewed (see List of the ESUs to be Reviewed). NMFS is soliciting pertinent information on naturally-spawned and hatchery populations within these ESUs such as: data on population abundance, recruitment, productivity, escapement, and reproductive success (e.g. spawner-recruit or spawner-spawner survivorship, smolt production estimates, fecundity, and ocean survival rates); historical and present data on hatchery fish releases, outmigration, survivorship, returns, straying rates, replacement rates, and reproductive success in the wild; data on age structure and migration patterns of juveniles and adults; meristic, morphometric, and genetic studies; and spatial or temporal trends in the quality and quantity of freshwater, estuarine, and marine habitats. NMFS is particularly interested in the information for the period since the most recent status review for a given ESU. Status reviews for the majority of the 25 ESUs to be reviewed were conducted in 1997-2000. However, the status of Sacramento River winter-run chinook, and Central California coast coho were last assessed in 1994 and 1995, respectively.

How will hatchery fish be treated in the status reviews?

At the same time it is updating the status reviews, NMFS will review its policy on how to consider artificial propagation in its ESA listing determinations and issue a new listing policy. This new policy is scheduled to be completed by September 2002. Listing and delisting decisions will be made in accordance with the new policy.

What does it mean when a petitioned action has been accepted?

Acceptance of a petition means that NMFS believes there is substantial information presented in the petition to indicate that ESA listing may be warranted. Acceptance does not mean that listing is automatic. Upon accepting a petition, the ESA requires that NMFS promptly commence a status review for the species concerned and make a finding as to whether the petitioned action is warranted within 12 months of the receipt date of the petition.

How will NMFS conduct its status review?

As in the past, NMFS will assemble a biological review team, made up of NMFS scientists from a variety of disciplines. They will review new information and consider it in light

of NMFS' new listing policy. Based on their review, they will advise NMFS on the extinction risk of the ESUs being considered. The team consults with state, tribal, and other fisheries experts during its deliberations.

Will there be any chance for non-agency experts to review and comment on the findings of the status review?

Yes. In the February 11, 2002 Federal Register notice (67 FR 6215), NMFS solicited the input from state agencies, tribal governments, and the public with any information that may be pertinent to the status reviews. NMFS will work with state and tribal comanagers to ensure that the review is based on the best available scientific information. NMFS will hold technical meetings with comanagers to discuss data needs, and also will provide a draft of the status review updates for the 25 ESUs for comanager review and comment.

What is going to happen between now and the completion of the status review updates?

The process for the status review updates is as follows:

- A 60-day comment period;
- NMFS science centers will meet with state and tribal fisheries managers to discuss initial data needs;
- NMFS will issue a new hatchery policy regarding the treatment of hatchery fish in ESA status reviews and listing determinations;
- NMFS science centers will meet with state and tribal fisheries managers to discuss final data needs in the context of the new hatchery policy;
- The biological review team will produce a draft of the status review updates for the 25 ESUs;
- NMFS will distribute the draft status review updates for state and tribal fisheries manager review and comment; and,
- NMFS then will publish in the *Federal Register* any proposed updates to the listing status of the 25 ESUs, in accordance with the findings of finalized status review updates.

Once the agency makes listing determinations for the 25 ESUs, what will happen next?

If the agency proposes listing for a candidate ESU, or proposes revised listing status for a currently listed ESU, there will be an additional year of review before making a final determination.

(2) New Policy for Hatchery Populations Under the ESA

How has NMFS treated hatchery populations in past ESA status reviews and listing Determinations?

In implementing its "Interim Policy on Artificial Propagation of Pacific Salmon Under the Endangered Species Act" (Interim Policy, 58 FR 17573; April 5, 1993), NMFS has emphasized naturally-spawned and self-sustaining populations in ESA listing determinations, and has included hatchery populations in the final listing only if they were determined to be similar to self-sustaining naturally-spawned fish, and deemed essential for recovery (i.e. needed

in artificial propagation programs intended to assist ESU recovery). NMFS adopted this approach in recognition of the ESA's emphasis on conserving self-sustaining populations in their natural ecosystems. Additionally, this approach was implemented to minimize governmental regulation. By excluding from listing hatchery fish that were determined to be nonessential for recovery, the agency could more efficiently and effectively meet tribal treaty and trust obligations and provide for commercial and sport fishing opportunities. In the Interim Policy NMFS asserted that the listing of hatchery fish determined to be nonessential to recovery would not contribute to the ESA's goal of ensuring viable and naturally-reproduced populations, and conserving the ecosystems they inhabit. This approach, however, was called into question by the *Alsea* decision, in which the court ruled that NMFS could not determine that certain hatchery populations are part of an ESU, yet exclude them from protections under the ESA in the final listing determination.

Why is NMFS reevaluating its policy on hatchery populations under the ESA?

The *Alsea* decision leads NMFS to reevaluate how hatchery populations are considered in ESA listing determinations. NMFS will propose several alternative approaches to a new policy for hatchery populations under the ESA. The new policy will supersede the agency's interim policy on hatchery populations under the ESA that was published in the *Federal Register* on April 5, 1993 (58 FR 17573).

What will the new policy address?

The new policy is intended to more clearly articulate how NMFS will consider artificial propagation in evaluating the risk of extinction for Pacific salmon and steelhead ESUs, and in making subsequent listing determinations under the ESA. The new hatchery policy will ensure (consistent with the *Alsea* decision) that when the agency lists an ESU, it lists the entire ESU - whether it includes hatchery populations, naturally spawned populations, or both. The new policy will also give consideration to the potential of some hatchery populations to mitigate short-term extinction risk when it makes a determination about the natural sustainability of an ESU.

What will the hatchery guidelines address?

In conjunction with the new policy for hatchery populations in ESA status reviews and listing determinations, NMFS will also issue guidelines for using hatchery populations to accelerate recovery, and for operating hatcheries over the long term to assure that artificial propagation of salmon stocks will not undermine recovery efforts under the ESA.

When will NMFS propose the new policy and hatchery guidelines?

NMFS will propose the new listing policy in a notice to be published in spring 2002 in the *Federal Register*. Draft guidelines for planning and operating hatchery facilities, consistent with the ESA, will be made available at the same time.

Will there be a chance for the public and non-agency experts to voice their opinions on the new hatchery policy and the supporting guidelines?

Yes. Both efforts will be offered to the public for review and comment.

(3) Interim Recovery Planning Targets

Why is NMFS issuing interim recovery planning targets?

In support of regional, state, tribal and local planning efforts NMFS will provide preliminary estimates of recovery planning targets. These targets, and the plans that address them, should also help reduce the uncertainty, and the costs associated with such uncertainty, that would otherwise occur for affected landowners and other stakeholders.

How will the interim recovery planning targets be derived?

The interim recovery planning targets will be interim policy goals, utilizing biological "rules of thumb" (e.g., the population abundance or productivity values maintained over a specified time frame that are necessary for population viability in a given subbasin). These preliminary recovery planning targets will be replaced by more refined and specific recovery goals derived from the Technical Recovery Teams (TRTs) and formal recovery planning processes.

What is the relationship of the interim recovery planning targets to the final recovery goals to be produced by the Technical Recovery Teams (TRTs)?

NMFS has established four TRTs (Puget Sound, Willamette/Lower Columbia, Southern Oregon/Northern California Coasts, and Interior Columbia) to develop biological delisting criteria. The TRTs are undertaking rigorous reviews and analyses of technical data to develop these criteria, which will then be used by appropriate local policy forums to determine final recovery goals. The interim recovery planning targets are not intended to compete with or supersede the more scientifically-rigorous final recovery goals to be provided through the TRTs and formal recovery planning. Rather, the interim targets are provided as a matter of management guidance to assist regional, state, tribal, and local recovery planning efforts until the final recovery goals are completed.

The TRTs are in the process of developing their final recovery goals. These final recovery goals will detail the population abundance, growth rate, number and distribution of populations, and population diversity required for viable salmonid populations, and will detail specific factors for decline that will need to be addressed for recovery. The preliminary recovery planning targets will provide guidance to recovery planners until they are refined by the more comprehensive TRT final recovery goals.

What is the legal meaning of the goals?

The ESA obligates NMFS to prepare recovery plans that contain objective and measurable criteria that when met can result in delisting the species. These interim goals will precede the final recovery criteria and do not have legal basis or bearing for ESA purposes. Rather, they are intended to provide an early gauge of the level of effort that could be needed to meet final recovery goals.

What is the timeline for issuing these interim targets?

NMFS intends to provide interim targets for all listed salmonid ESUs by Spring 2002. The refined, more specific, and comprehensive goals from TRT and local recovery planning efforts will be available by early summer 2002 for ESUs in the Puget Sound, Upper Columbia,

and Lower Columbia recovery areas.

What opportunities will there be for tribal, state, regional, local, and public input and comment on the development of the interim recovery planning targets?

By their very nature the interim targets are only rough approximations of the more scientifically rigorous final recovery goals. These interim targets will be continually updated and refined as more scientific information is made available. This refinement process will involve and encourage input and comment from stakeholders and state and tribal fisheries managers. However, so that NMFS can quickly issue these interim targets in support of current and ongoing recovery planning efforts, the initial interim targets will not receive comprehensive review by stakeholders and comanagers. It is NMFS' intent that these preliminary targets will stimulate and assist in regional, state, local and tribal recovery efforts. NMFS also hopes these interim targets will encourage local involvement in establishing the final recovery goals through the TRT and formal recovery planning process.